IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12121 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUTEJABEN USMANBHAI WD/O USMANBHAI GULAMBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12121 of 1993

MR KB PUJARA for Petitioner.

Mr. LR Poojari, AGP for Respondent.

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner is an agriculturist and owner of land of block No. 122 (Old Survey No. 125) of Village Fatepur,Taluka-Bayad, has preferred this Special Civil Application under Article 226/227 of the Constitution of India challenging the judgment and order passed by the Deputy Collector, Bayad dated 31.7.1993 under Section 65

of the Bombay Tenancy & Agricultural Lands Act, 1948, by which the land of the petitioner has been confiscated.

2. The Deputy Collector, Bayad issued a show cause notice upon the petitioner on 10.3.1993 exercising powers under Section 65 of the Bombay Tenancy & Agricultural Lands Act, 1948, (hereinafter referred to as "the Act") alleging inter alia that the land in question is kept uncultivated and a fallow land from 1985 to 1990 and therefore the said land is to be taken over by the State Government and therefore the petitioner was directed to remain present at Modasa. The petitioner appeared before the Deputy Collector, Modasa and filed his detailed reply denying the allegations levelled in the show cause notice. It was specifically denied that the land in question is kept uncultivated and a fallow land. It was submitted on behalf of the petitioner that there are berry trees in the lands in question and they are earning from the same. It was also further contended on behalf of the petitioners that it is not possible to have any other crop looking to the land in question and therefore they have grown berry trees. A Panchnama was also drawn by Talati-cum-Mantri of the village in question in which it was also found that there are berry trees in the said land in question. Inspite of the aforesaid facts and circumstances of the case, the Deputy Collector by his judgment and order dated 31.7.1993 has passed an order of confiscation of land in question exercising powers under Section 65 of the Act by holding that the agricultural activity is not going on in the land in question and that the land in question is kept as a fallow land and for that purpose he has also relied upon reports submitted by Incharge Mamlatdar and Circle Officer of Village Akrund and by holding that the land in question is not cultivated for more than 3 years continuously and therefore passed an order of taking over the land/confiscation of land exercising the powers under Section 65 of the said Act.

3. That being aggrieved and dissatisfied with the said order dated 31.7.1993 passed by the Deputy Collector, Modasa under Section 65 of the Act in taking over of the land in question and passing the order of confiscation, the present Special Civil Application is filed under Article 226 of the Constitution of India. Shri KB Pujara, learned advocate appearing for the petitioner has submitted that the findings given by the Deputy Collector in his order dated 31.7.1993 are contrary to the evidence on record and that there is crop of berry trees in the land in question and in that view of the matter and looking to the fertility of the land in

question it is not possible to grow any other crop in the land in question. He has submitted that while passing the impugned order dated 31.7.1993 the Deputy Collector has relied upon the Inquiry Report submitted by the Incharge Mamlatdar and Circle Officer, a copy of which has never been given to the petitioner to controvert the same and that the said inquiry is initiated and conducted by the Deputy Collector behind the back of the petitioner. Shri Pujara has also further submitted that under Sec. 65 of the Act there is no power of confiscation and the maximum power that may be exercised is power to take management and that too for a period not more than 10 years. Under the circumstances, he has submitted that the order passed by the Deputy Collector dated 31.7.1993 in passing the order of confiscation of the land in question for all times to come is erroneous and against the provisions of Section 65 of the Act and requested to quash and set aside the same. Shri Pujara has relied upon the Judgment of this Court rendered by this Court in Special Civil Application No. 448 of 1982 and also Judgment of the Hon'ble Supreme Court in Ramanlal Gulabchand Shah Vs. The State of Gujarat, reported in AIR 1969 S.C. Page 168, in support of his aforesaid contention.

4. On the other hand, Mr. Poojari, learned AGP appearing for the respondents has supported the order passed by the Deputy Collector dated 31.7.1993. He submitted that there is a finding of fact given by the Deputy Collector with regard to non-user of the land in question for more than 3 years consecutively and the Deputy Collector has rightly exercised his power under Section 65 of the Act.

5. I have heard the learned counsel appearing for both the parties. Section 65 of the Act reads as under;

> 65. (I) If it appears to the (State) Government that for any two consecutive years, any land has remained uncultivated 2 (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the 1 (State) Government may, after making such inquiry as in thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.
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> 3(IA) The assumption of management of

land under sub-section (I) on the ground that the full and efficient use of the land has not been made for the purpose of agriculture shall be for such period as the State Government may, from time to time, fix so, however, that such period shall not exceed ten years in the aggregate.)

(2) On the assumption of the management, such land shall vest in the 1 (State) Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land;

4 (Provided that the manager may in suitable cases give such land on lease as rent even equal to the amount of its assessment;

Provided further that if the management of the land has been assumed under sub-section (I) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III as the case may be, in respect of such land, with efffect from the date on and from which such management has been assumed."

Considering the aforesaid provisions, it is clear that if it is found by the State Government that for any two consecutive years any land has remained uncultivated, Government may after making such inquiry as it thinks fit declare that the management of such land shall be assumed and that the assumption of managment of land shall not exceed 10 years in the aggregate. Thus, under Section 65 of the Act, the State Government has no power or jurisdiction to confiscate the land in question permanently and now considering the order passed by the Deputy Collector dated 31.7.1993, the Deputy Collector has passed an order of confiscation of the land in question permanently and therefore the order passed by the Deputy Collector in confiscating the land in question is ex facie illegal and against the provisions of Section 65 of the Act. This Court, in Special Civil Application No. 448 of 1982, has taken the similar view and has held that under Section 65 of the Act, there is no power of confiscation and the maximum power that can be had is the power to take the management and no notice was given with regard to the management and therefore the order cannot be allowed to stand. In the present case also, even if we look to the notice dated 10th March 1993 by which the petitioner was called upon to show cause, there is no reference to taking over of management of the land in

question and the notice was given with regard to confiscation of the land in question and the said notice was given under Section 65 of the Act. Therefore, even the show cause itself was beyond the scope of Section 65 of the Act and therefore as held by this Court, the order passed by the Deputy Collector, Modasa, dated 31.7.1993 in confiscating the land in question, requires to be quashed and set aside.

6. There is another aspect of the matter also. While passing the impugned order dated 31.7.1993, the Depuity Collector has relied upon the Inquiry Report submitted by Incharge Mamlatdar and Circle Officer, Akrund, the copy of which has never been given to the petitioner and inquiry was conducted ex-parte behind the back of the petitioner. If the Deputy Collector wanted to rely upon the Panchnama/Inquiry Report then the same should have been given to the petitioner either to controvert the same and/or to meet with the same. But in the present case, the copy of the Panchnama/Inquiry Report which was got through Incharge Mamlatdar and Circle Officer, Akrund is not given to the petitioner though the same has been relied upon by the Deputy Collector while passing the impugned order. Under the circumstances also, the judgment and order passed by the Deputy Collector dated 31.7.1993 is against the principles of natural justice which requires to be quashed and set aside and on both the grounds stated above the impugned order dated 31.7.1993 is quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]